IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 268 of 2006.

Date of decision: 21.11.2006

Smt. Chander Kanta **…..Appellant.**

VERSUS

Bhagat Ram **…..Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : **Mr. R.K.Bawa, Sr. Advocate with Mr. Raj Pal Thakur, Advocate.**

For the Respondent : **Mr. G.D.Verma, Sr. Advocate with Mr. B.C.Verma, Advocate.**

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Appellant- plaintiff filed a suit seeking issuance of permanent prohibitory injunction against the respondent- defendant. The case of the appellant- plaintiff was that she is owner in possession of land, bearing khasra No. 320, and adjacent to that land is the property of the respondent- defendant, bearing khasra No. 322. She alleged that while raising construction over khasra No. 322 in January, 2000, defendant extended the projections of the building over the property of the plaintiff, bearing khasra No. 320 to the extent of .75 meter width all along the boundary. Therefore, she prayed for

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Whether the reporters of the local papers may be allowed to see the Judgment?

issuance of mandatory injunction, directing the defendant-respondent to remove the overhanging projections. She also prayed for issuance of permanent prohibitory injunction, restraining the respondent-defendant from causing any interference in her property, bearing khasra No. 320.

3. Respondent- defendant denied the averments made in the plaint and alleged that entire construction had been made on his own property, bearing khasra No. 322 and there was no encroachment either on the ground or overhanging.

4. The two courts below have returned a concurrent finding that the evidence on record does not prove any encroachment or any threat of interference. In view of this finding, the suit of the plaintiff-appellant has been dismissed by the trial court and her appeal against the decree of dismissal of the suit also stands dismissed by the first appellate court.

5. Admittedly, the appellant- plaintiff did not get the boundary of the adjoining properties of the parties delineated. She did not approach the revenue authorities for demarcation nor did she seek appointment of a Local Commissioner for the demarcation of the boundary in the course of the trial of the suit or even at the first appeal stage. Not only this, no application has been filed with the memorandum of appeal even in this court for appointment of a Local Commissioner for delineation of the boundary.

6. Plaintiff- appellant placed on record a report of an Engineer, from whom she got the spot inspected before filing of the suit. The report of the said Engineer, which is Ex. PW 3/A, shows

that it is based not upon any observation, opinion, view or the judgement of the Engineer himself, but upon what he was told by the appellant- plaintiff so far as the ownership of the site over which the projections of the house of the defendant overhang. According to the report, the plaintiff told the Engineer that the site below the projections belonged to her and it is on the basis of this statement of the appellant- plaintiff that the Engineer has recorded that there is an encroachment.

7. In view of the above stated position, I do not think any substantial question of law arises. Hence the appeal is dismissed.

CMP Nos. 432 & 433 of 2006.

8. Infructuous.

November 21, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**